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VIA SAME-DAY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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MAR 28 1997

Federal Communications Commission
Office of Secretary

Re: Reply Comments of The Game Show Network, L.P. in
MM Docket No. 95-176

Dear Mr. Caton:

On behalf of The Game Show Network, L.P. ("GSN"), and in accord with 47 C.F.R. § 1.419, enclosed for filing with the Commission are an original and eleven copies, which include copies for each Commissioner, of the Reply Comments of GSN in response to the Commission's Notice of Proposed Rulemaking in the Matter of Closed Captioning and Video Description of Video Programming, in the above-referenced docket. Also enclosed is a disk containing GSN's Reply Comments in Word Perfect 5.1 format.

An additional copy of the Reply Comments is enclosed to be date-stamped. Please return the date-stamped copy to the courier for delivery to the undersigned.

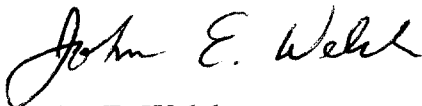
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Any questions regarding this filing should be referred to the undersigned.
We very much appreciate your assistance in processing this filing.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John E. Welch".

John E. Welch
Jessica Davidson Miller

Counsel to The Game Show Network, L.P.

Enclosures

cc: Kim Cunningham, Esq.
Game Show Network

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

RECEIVED
MAR 28 1997
Federal Communications Commission
Office of Secretary

In the Matter of)

Closed Captioning and Video)
Description of Video)
Programming)
_____)

MM Docket No. 95-176

REPLY COMMENTS OF THE GAME SHOW NETWORK, L.P.

John E. Welch
Jessica Davidson Miller

O'MELVENY & MYERS LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109

Counsel for The Game Show Network, L.P.

Dated: March 28, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	MM Docket No. 95-176
Closed Captioning and Video)	
Description of Video)	
Programming)	
)	

To: The Commission

REPLY COMMENTS OF THE GAME SHOW NETWORK, L.P.

The Game Show Network, L.P. ("GSN"), by its counsel, submits these comments in reply to comments submitted to the Commission pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ In these reply comments, GSN expresses its support for two proposals raised by various commenters in the comment phase of this proceeding. First, GSN supports broadening the exemption proposed in its Comments² to include all cases in which captioning would block significant textual or graphic information to the viewer. Second, GSN supports an exemption for programming networks that have been on the air for less than five years, or are available to fewer than 20 million households.

¹ In the matter of Closed Captioning and Video Description of Video Programming, FCC Rel. No. 97-4, MM Docket No. 95-176 (released Jan. 17, 1997) ("NPRM").

² See Comments of The Game Show Network, L.P., 9 (filed Feb. 28, 1997) ("Comments").

ARGUMENT

I. The Commission's Rules Should Include An Exemption For Cases Where Captioning A Program Would Block Significant Material On The Screen.

Section 713(d) of the Telecommunications Act of 1996 (the "Act") states that "the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome."³ It is clear from this provision that Congress did not intend to mandate across-the-board closed captioning where doing so would impose too great a burden on the programmer.

As explained by several commenters in this proceeding, the Commission should not require programmers to caption full-screen programs where the captions would actually block significant textual or graphic information on the screen. For example, several commenters urged the Commission to exempt from its closed-captioning rules certain programs that include full-screen weather maps,⁴ textual news services,⁵ or other textual or graphic information.⁶ These commenters all shared the same concern:

³ See Telecommunications Act of 1996, Pub. L. No. 104-104, § 713, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613 (1996)) (emphasis added).

⁴ See Comments of the Weather Channel, 15-17 (filed Feb. 28, 1997) ("closed captioning bar would provide a constant impediment" by blocking important graphic and textual weather updates).

⁵ See Comments of Bloomberg Information Television, 7-10 (filed Feb. 28, 1997) (captioning would block textual news programming).

⁶ See Comments of Prevue Networks, Inc., 6-7 (filed Feb. 28, 1997) (closed-captioning Prevue channel "would have a serious and detrimental impact to the current on-screen format" because "one or more of the elements of the content would be obscured to the viewer"); see also Comments of QVC, Inc., 20-21 (filed Feb. 28, 1997) (continued...)

that inserting captions would obstruct important visual components of their programming, thereby diminishing -- rather than increasing -- program access for the hearing impaired.

In its Comments, GSN requested an exemption for certain game show programs, because these shows require the display of various game components that fill up most, or all, of the television screen, and it would be impossible to caption these programs without blocking one or more of the game's critical components.⁷ Certainly, it makes no sense to close caption a program if the captions would block significant textual or graphic information, thus preventing the program -- even with captions -- from being truly accessible to the hearing impaired.

Given that several commenters have expressed concerns about the obstruction of their programs by closed captions, GSN supports a broader exemption that would cover all cases where captioning would block significant textual or graphic information, as long as such an exemption would also cover GSN's game shows that use most or all of the screen to convey game information.

⁶(...continued)
(captioning home shopping service would "conceal essential product and ordering information").

⁷ See Comments at 9; see also Attachment A (displaying the full-screen format of the GSN program "Trivia Track" and the obstructions that would be caused to the screen by closed captioning).

II. The Commission's Rules Should Include An Exemption For Start-Up Networks (At Least With Regard To Library Programming Rules).

GSN also supports the proposals made by several commenters to exempt start-up networks from the Commission's closed-captioning rules.⁸ GSN believes that such an exemption is just what Congress envisioned in expressly permitting the Commission to craft exemptions where application of the rules would be "economically burdensome." GSN would propose that the "start-up network" exemption apply to programmers that are less than five years old or available to fewer than 20 million households.⁹

The economic burdens on start-up networks would be greatest in the area of rules requiring the captioning of library collections, because many new programmers rely primarily on previously broadcast programming that they purchased before the 1996 Act was enacted, with no expectation of this future obligation.¹⁰ As stated in its

⁸ See e.g., Comments of C-Span and C-Span 2, 10 (filed Feb. 27, 1997) (recommending 5-year grace period for new programmers as well as minimum of 15 million audience-reach before closed-captioning rules are applied to a programmer); Comments of CBS Inc., 16-17, 22-25 (filed Feb. 28, 1997) ("CBS Comments") (urging Commission to exempt from library programming requirements all providers that do not have a national audience reach); Comments of Outdoor Life Network, et al., 33-40, (filed Feb. 28, 1997) (urging the Commission to exempt "all low-penetrated, national, basic programming networks, defined as those with fewer than 20 million paying or non-paying subscribers"); Comments of the A&E Television Networks, The History Channel and Ovation, 23 (filed Feb. 28, 1997) ("the Commission should exempt any new network from captioning requirements").

⁹ See Comments of Outdoor Life, et al. at n. 8, supra (defining measurement for low-penetrated networks).

¹⁰ See CBS Comments at 23-24 ("Captioning mandates would unfairly reduce the value of library programming to its copyright owners who could not have foreseen any obligation to caption the programming when they acquired the rights to it.").

Comments, GSN's principal asset is its library of approximately 50,000 previously broadcast game show episodes.¹¹ At present, less than five percent of these episodes are closed captioned, and GSN estimates that it would cost approximately \$500 to caption each of the remaining programs. Accordingly, if the Commission were to implement a threshold of 75 percent, as suggested in the NPRM,¹² GSN would be forced to invest approximately \$18 million to bring its collection into compliance. Other new programmers would face similar expenses, which would not only jeopardize the very viability of newer networks like GSN, but would also create an incentive for them to limit their programming schedules to only a small percentage of their collections, thus wasting resources and undermining the Commission's over-arching goal of programming diversity.¹³

Start-up networks would also face a huge economic burden under the Commission's planned phase-in of its closed-captioning rules (assuming that the phase-in percentages would be measured on a system-wide basis). Under such a scheme, video services providers would undoubtedly prefer to carry established networks with a high percentage of closed-captioned programs, and to discriminate against start-up

¹¹ GSN licenses these game shows from both affiliated and non-affiliated entities.

¹² See NPRM at ¶ 6.

¹³ See CBS Comments at 24 ("where the costs of captioning cannot be recouped through wide distribution or repeat airings, uncaptioned library programming may simply be withheld from the public"); Comments of The Motion Picture Association of America, Inc. 14 (filed Feb. 28, 1997) (requiring library programming to be closed-captioned would "serve to keep diverse programming away from the public").

programmers that carry less captioned programming.¹⁴ Because the biggest challenge to start-up networks is gaining carriage on a sufficient number of provider systems, the closed-captioning rules would thus undermine the critical, early efforts of start-up networks to establish themselves as viable programmers. Again, this is clearly the type of economic burden that Congress meant to avoid in Section 713(d).

In sum, because start-up programmers often have fewer financial resources and less bargaining power than their established competitors, the Commission's proposed closed-captioning rules would be inordinately burdensome on these entities. Accordingly, GSN urges the Commission to exempt start-up programmers from all of its closed-captioning rules -- or at the very least from its library programming requirements, which are sure to fall hardest on such start-up enterprises.

CONCLUSION

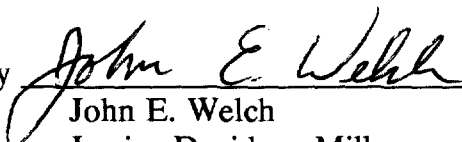
GSN is strongly committed to fulfilling its public service obligations and increasing the amount of television programming that is available to the hearing impaired. However, GSN is concerned that captioning certain GSN full-screen programs would not be feasible without blocking significant textual or graphic material on the screen. Moreover, GSN believes that access for the hearing impaired should not be achieved at the expense of start-up networks whose primary assets are large libraries of previously broadcast programs (that were purchased at great expense and without any expectation of future captioning costs). Accordingly, GSN would first, urge the

¹⁴ See Comments of Outdoor Life Network, et al. at 23 ("new networks that do not provide captioning will be less attractive to MVPDs").

Commission to exempt from its rules any programming that requires substantially full use of the screen for significant textual or graphic programming components. Second, GSN urges the Commission to exempt from its closed-captioning rules (and at the very least from its library programming rules) all start-up networks -- i.e., programmers that have been on the air for less than five years, or are available to fewer than 20 million households.

Respectfully submitted,

The Game Show Network, L.P.

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Its Counsel

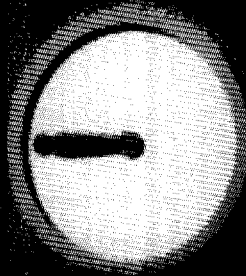
Dated: March 28, 1997
DC1-279054.V1



This is an example of closed captioning.
The words cover up the horses racing,
which is essential to the game



It's



- Joe
- J.P.
- YOLANDA
- YOLANDA
- SCRATCH

1	2	3
4	5	6
7	8	9
*	0	#

*Trivia
Track*

E-Z-SI



Joe

J.B.

YOLANDA

1

1 2 3

This is an example of closed captioning.
The words cover up the players' names &
answers, plus some of the keypad.

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